

E-Filed 1/30/2008

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DAVANZIA, S.L., a Spanish corporation,

Case Number C 07-247

Plaintiff,

ORDER¹ RE REQUEST FOR CLARIFICATION

V.

LASERSCOPE, INC., a California corporation, and
AMERICAN MEDICAL SYSTEMS, INC., a
Minnesota corporation,

Defendants.

LASERSCOPE, INC., a California corporation, and
AMERICAN MEDICAL SYSTEMS, INC., a
Minnesota corporation,

Cross-Complainants,

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DAVANZIA, S.L., a Spanish corporation,

Cross-Defendant.

Counsel for Laserscope, Inc. ("Laserscope") and American Medical Systems, Inc.

¹ This disposition is not designated for publication and may not be cited.

1 ("AMS") seeks clarification of the Court's Order dated January 22, 2008 granting Davanzia, S.L.
2 ("Davanzia") leave to amend its complaint. Laserscope is a wholly owned subsidiary of AMS.
3 AMA twice has moved to dismiss Davanzia's complaint in its entirety. On April 27, 2008, the
4 Court granted AMS's motion without prejudice on the grounds that Davanzia had not sufficiently
5 alleged an alter ego relationship between Laserscope and AMS. On July 30, 2007, the Court
6 dismissed the claims asserted against AMS in the Second Amended Complaint explaining, "it is
7 possible that discovery will reveal additional facts relevant to the negotiation of the Agreement or
8 the relationship between AMS and Davanzia. Accordingly, the motion to dismiss will be granted
9 without prejudice to a future motion for leave to amend should discovery reveal such relevant
10 facts." The Court also dismissed with leave to amend Davanzia's claims for damages based on
11 termination of the Authorized International Distributor Agreement ("the Agreement") between
12 Davanzia and Laserscope. On January 9, 2008, Davanzia filed a motion for leave to amend its
13 Second Amended Complaint, arguing that amendment was necessary because during discovery it
14 had become aware of facts supporting a claim that Laserscope had breached the exclusivity
15 provision of the Agreement. The Court granted the motion without oral argument. Davanzia's
16 Third Amended Complaint asserts claims against ASA without including any new allegations
17 regarding its termination claim ASA's alter-ego status or its involvement in any of the alleged
18 dealings with Davanzia.

19 Counsel for Laserscope and ASA requests confirmation that this Court's Order of July
20 30, 2007 applies to all parties and all claims that were dismissed by that Order and are reasserted
21 in the Third Amended Complaint. The Court confirms that all claims against ASA and the
22 termination claim against all parties were dismissed without prejudice. Davanzia has not added
23 any additional allegations with respect to the dismissed claims. The inclusion of these claims in
24 the Third Amended Complaint was inappropriate and the Court thereby CLARIFIES its order
25 dated January 22, 2008 by striking the allegations from the Third Amended Complaint.

26 **IV. ORDER**

27 **IT IS SO ORDERED.**

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3 DATED: January 30, 2008.
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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

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